IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.863/2002

Reserved on.27.4.2007

Decided on-6.1.2007

Kanta Mahajan & another **…Petitioners.**

Versus

Municipal Council, Dalhouse **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*.No*

For the petitioners : **Mr. Suneet Goel, Advocate**

For the respondents **Mr. Neeraj Kumar Sharma, Advocate.**

Rajiv Sharma, J.

This petition is directed against the judgment of learned District Judge, Chamba, District Chamba, H.P. decided on 8.5.2002.

The brief facts necessary for the adjudication of this petition are that the respondent-Council had received complaint dated 20.1.2000 against the petitioners for raising unauthorized constriction by laying RCC slab measuring 13.15 mtrs X 7.55 mtrs of first floor in hotel Kings situate at Panjpulla Road Dalhousie without getting prior permission. Consequently a notice was issued to the petitioners on 21.11.2000 to stop the construction. The petitioners did not stop the unauthorized construction which led to filing of another report by the employees of the respondent-council on 4th December, 2000 bringing to the notice of the council that the petitioner was still engaged in raising unauthorized construction. The petitioners were called upon to show cause within 24

---

[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***?No

hours from the receipt of the notice why a fine of Rs. 1000/- be not imposed upon him. The matter was then placed before the House of the Municipal Council on 8.3.2001 whereby it was unanimously resolved to ask the petitioners to submit the drawings to enable it to compound the case under the rules. The council issued notice on 22.3.2001 to the petitioners to submit the building plan. The petitioners did not comply with the notice dated 22.3.2000 and as such the matter was finally placed before the House of the Municipal Council on 27.6.2001 and it was unanimously resolved to demolish the unauthorized construction raised by the petitioner. Ultimately the order dated 5.7.2001 was passed by the Executive Officer, Municipal Council, Dalhousie to demolish the unauthorized construction of the first storey of hotel King within 7 days from the date of receipt of the order. Feeling aggrieved by the order dated 5.7.2001, petitioners had filed appeal under section 212 (1) of the Municipal Act, 1994 before the learned District Judge, Chamba on 22.9.2001. The learned District Judge had dismissed the appeal on 8.5.2002.

Mr. Sunit Goel, Advocate appearing on behalf of the petitioners has strenuously argued that the petitioners had not been served with the notices as mentioned in the order dated 5.7.2001 and the judgment dated 8.5.2002 of the learned District Judge, Chamba is also against the provisions of the H.P. Municipal Act, 1994.

Mr. Sandeep Kaushik, Advocate appearing on behalf of respondent- Council has supported the order dated 5.7.2001 passed by the Executive Officer of the Council as well as judgment dated 8.5.2002 passed by the learned District Judge, Chamba.

I have heard the parties and perused the record.

The contention raised by the petitioners that there was violation of principles of natural justice by the Council is untenable. The petitioners had been served with the notices mentioned in the order dated 5th July, 2001. The copies of all the notices have been placed on record by the respondent-Council which were duly acknowledged by the petitioners. It was incumbent upon the petitioners to submit the reply to all the notices more particularly when those pertain to the unauthorized construction raised by them. The petitioners could not be permitted to raise unauthorized construction despite receiving the notices issued by the Council from time to time on the basis of the reports furnished by its employees. The petitioners had also been afforded an opportunity on the basis of the resolution of the House of the Municipal Council on 8.3.2001 to furnish the drawings to enable it to compound the matter if it is within the parameters. The petitioners had also not availed that opportunity and continued with the construction work which led to passing of the resolution dated 27.6.2001 on the basis of which order dated 5th July, 2001 was issued. The learned District Judge after going through the entire record has come to the just conclusion that the construction raised by the petitioner was unauthorized since no prior permission as required under the H.P. Municipal Act, 1894 and the bye-laws framed there-under was sought. The learned District Judge has dealt with in detail the true import of various sections of the H.P. Municipal Act, 1894 while dismissing the appeal preferred by the petitioner against the order dated 5th July, 2001.

The other contention raised by Mr. Suneet Goel, Advocate is that the similarly situated persons, who have raised the unauthorized construction, have been let off by the Council is also un-tenable in view of the specific stand taken by the Council in its reply. The gist of the reply with regard to allegations contained in para 12 of the petition are that the

Council has only compounded the matters where the deviation was less than 10%. The petitioners can not be permitted to take advantage of the orders passed in the cases of the persons mentioned in para 12 of the petition. The petitioners can only claim equality under Article 14 of the Constitution of India on the basis of positive averments and not negative averments.

The learned District Judge has examined the record and the findings recorded by him will not be interfered with by this Court while exercising the jurisdiction under Article 226/227 of the Constitution of India.

The Hon'ble Supreme Court in ***M.I. Builders Pvt. Ltd. V. Radhey Shyam Sahu*** (1999*) 6* SCC 464 has held that the Court should order demolition of such construction even though builder has invested considerable amount. Their Lordships of the Hon'ble Supreme Court have opined as under:

> **"No consideration should be shown to the builder or any other person where construction is unauthorized. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorized construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles."**

The upshot of the above discussion is that there is no violation of the principles of natural justice as submitted by Mr. Suneet Goel, Advocate appearing on behalf of petitioners as the petitioners have received the notices issued by the Council from time to time and the petitioners chosen not to file the reply to the same. It has come on record that the petitioners were repeatedly warned not to raise unauthorized construction but to no avail. On two occasions, the tools were also seized but that also did not deter the petitioners to raise the unauthorized construction. It was in these circumstances and on the basis of the report furnished by the Sanitary Inspection and Junior Engineer of the Council that the matter was placed before the Council, who passed the resolution on 27.6.2001 which led to the issuance of notice dated 5th July, 2001. The council had already explained the position of the action taken against the persons whose names have been mentioned in para 12 of the petition.

As such there is no merit in the petition and the same is dismissed accordingly with no order as to costs and the interim order dated 1.7.2002 is vacated.

(Rajiv Sharma), Judge

June 1, 2007
Awasthi